

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BERNADETTE L. JARAMILLO,

Petitioner,

v.

No. 16-cv-0284 LH/SMV

MONICA WETZEL,

Respondent.

ORDER

THIS MATTER is before the Court on Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody. *See* Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. Petitioner has named the State of New Mexico as the Respondent, but Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts provides that "[i]f the petitioner is currently in custody under a state-court judgment, the petition must name as respondent the state officer who has custody." Rule 2(a); *see also Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004) (noting that "in habeas challenges to present physical confinement—'core challenges'—the default rule is that the proper respondent is the warden of the facility where the prisoner is being held"). Petitioner is currently incarcerated at the New Mexico Women's Correctional Facility and, therefore, the Court will substitute Warden Monica Wetzel as the named Respondent. Having determined that the § 2254 Petition is not subject to summary dismissal, the Court will order Respondent to file an answer to the Petition.

IT IS THEREFORE ORDERED that the Clerk is directed substitute Warden Monica Wetzel as the sole named Respondent and to forward copies of this Order and the Petition to

Respondent and the New Mexico Attorney General;

IT IS FURTHER ORDERED that Respondent answer the Petition within thirty (30) days from entry of this Order. Respondent's answer shall advise, but is not limited to, whether Petitioner has exhausted her state court remedies as to the issues raised in the federal petition. In each case, Respondent shall attach to its answer copies of any pleading pertinent to the issue of exhaustion which was filed by Petitioner in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondent shall also attach to the answer copies of all state court findings and conclusions, docketing statements, and opinions issued in Petitioner's state court post-conviction or appellate proceedings. In the event Respondent denies exhaustion, Respondent shall identify the State procedures currently available to Petitioner given the nature of Petitioner's claims and their procedural history.



STEPHAN M. VIDMAR
UNITED STATES MAGISTRATE JUDGE